Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	CC Docket No. 96-238
Amendment of Rules Governing	)	
Procedures to Be Followed When	)	
Formal Complaints Are Filed	)	
Against Common Carriers	)	

TO: The Commission

COMMENTS OF SBC COMPANIES

SOUTHWESTERN BELL TELEPHONE COMPANY

Robert M. Lynch
Durward D. Dupre
Barbara R. Hunt

One Bell Plaza
Room 2400
Dallas, TX, 75202
(214)464-5388

Its Attorneys

PACIFIC BELL
NEVADA BELL

Nancy Woolf

140 New Montgomery Street
San Francisco, California 94105
(415) 542-7657

Their Attorney

January 12, 1998

TABLE OF CONTENTS

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Rules Governing	)	CC Docket No. 96-238
Procedures to Be Followed When	)	
Formal Complaints Are Filed	)	
Against Common Carriers	)	
	)	

COMMENTS OF THE SBC COMPANIES

Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell (collectively, the SBC Companies), pursuant to the Public Notice[1] released December 12, 1997, hereby respond to the issues raised therein.

Introduction and Summary

The Commission's goal of providing rapid investigation and adjudication of disputes is laudable, but even more important than speed is accuracy. The Commission just recently published, on November 25th, its new streamlined process for handling formal complaints;[2] that process is not even yet effective. There is no reason to believe that complaints subject to this second Accelerated Docket initiative will be less complex than those handled in the streamlined

---

[1]Public Notice, Common Carrier Bureau Seeks Comment Regarding Accelerated Docket For Complaint Proceedings, CC Docket No. 96-238 (DA 97-2178) (released December 12, 1997).

[2]Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers, CC Docket No. 96-238, Report & Order, released November 25, 1997.

process outlined in the Report and Order in CC Docket No. 96-238 ("Complaint R&O"). It is difficult to see how the very same fact gathering process to which twenty days has been allotted in that proceeding, can be even further compressed here to just seven days. It is inevitable that the quality of the investigation and presentation of facts and legal issues necessary to reach a resolution of the complaint would be seriously impacted by reducing the timeframe by more than fifty percent. A sixty day process that runs from the date the complaint is filed just does not allow enough time for a thorough development of the facts and legal issues to enable the adjudicator to reach an informed, fully reasoned decision.

The need for an Accelerated Docket must be weighed against the more crucial need for a well-considered and just result. The streamlined process recently announced in the Complaint R&O provides a more reasonable timeline than the one here proposed, yet still results in an expeditious decision. The Enforcement Task Force should use the timeline established in the Complaint R&O.

The "minitrial" process could be a useful tool, but only if used in conjunction with "notice-type" pleading as a substitute for the full blown paper presentation of the case as outlined in the Complaint R&O. The timeline currently proposed in the Public Notice is too short to permit any reasonable discovery process.

The pre-filing procedures should require the complainant to provide a 30 day notice of all issues to the registered agent of the defendant in order to encourage settlement. In addition, an initial status conference should be used to make a ruling on threshold issues, such as jurisdiction and failure to state a claim, before admitting any complaint to the Accelerated Docket.

A seven day period for a comprehensive answer is too short and would constitute a denial of due process. No answer period shorter than twenty days should be adopted, unless a "notice-type" answer is specified, with the full presentation of facts and law at the "mini-hearing."

No status conference requiring the pre-filing of a joint stipulation should be scheduled prior to twenty five days after the complaint is filed. An earlier status conference should be used for the purpose of ruling on pending motions and on the issue of whether the complaint should be granted Accelerated Docket status.

The bonding or deposit of funds procedure of the Complaint R&O should not be applied to complaints on the Accelerated Docket. All complaints should be resolved in a timeframe that will allow expeditious appeal. The SBC Companies support the use of *en banc* argument before the Commission, as proposed.

I. Need for Accelerated Docket.

The Public Notice asks Commenters:

> to discuss factors that may support the creation of a hearing-type, accelerated complaint process like that discussed herein. Thus, commenters should provide information about specific events, general industry trends or particular categories of disputes that might benefit from treatment under the Accelerated Docket. Additionally, comment is sought on whether the Accelerated Docket initially should be limited to issues of competition in the provision of telecommunications services. In particular, comments should offer suggestions and recommendations as to how the Commission can work cooperatively with state utility commissions on such enforcement matters to ensure that the respective interests of the Commission and the states are protected.[3]

The SBC Companies certainly support expeditious resolution of complaints by the Enforcement Task Force and believe that a hearing-type procedure could facilitate

---

[3]Public Notice at p. 3.

accomplishment of that goal, but only if the hearing is a **substitute** for the full paper presentation of the defendant's case. There is no indication in the Public Notice, however, that the hearing is to in any way alleviate the defendant's obligation to fully present its case on paper at the time the answer is filed. The timeframes that have been proposed are simply too compressed to allow the detailed answer envisioned by the Complaint R&O. Thus, the answer filed will likely not contribute to a well-considered decision on issues that could have precedential effect far beyond the scope of the particular complaint being decided. The shortest procedural schedule that the SBC Companies believe might possibly be workable is as follows:

30 days prior to a complaint being filed	Notice to defendant's Registered Agent of all claims/causes of action in complaint
Complaint filed and served on defendant	
Within 5 days after service of complaint	Any Motion to Dismiss or to Deny acceptance onto Accelerated Docket Due
Within 15 days after service of complaint	Status Conference to rule upon Motions and/or to rule on Accelerated Docket Status
20 days after acceptance onto Accelerated Docket	Complaint R&O type answer due
Within 5 days after answer filed	Joint Stipulation Due
28 days or more after answer filed	Status Conference to facilitate settlement and rule on any motions
45 days after answer filed	Mini-hearing
60 days after answer filed	Decision

The SBC Companies would also propose that acceptance of a complaint onto the Accelerated Docket should be strictly limited to complaints raising issues that pose a serious threat to the development of local competition because that is the only type of complaint that could possibly justify such extremely short time frames. There are also other threshold issues that should be considered before according Accelerated Docket status to a complaint. It is important to establish a clear procedure for the acceptance of complaints onto the Accelerated Docket in order to avoid confusion between the Accelerated Docket schedule and the schedule just set in the Complaint R&O for the resolution of formal complaints on an expedited basis.

First and foremost of the threshold requirements to be considered is whether the FCC has jurisdiction over the particular complaint. Complaints subject to the FCC's jurisdiction regarding impediments to the development of local competition should be very rare because most such matters would be within the jurisdiction of the various state commissions. As recently recognized by the U.S. Court of Appeals for the Eighth Circuit, "the Act plainly grants the state commissions, not the FCC, the authority to determine the rates involved in the implementation of the local competition provisions of the Act."[4] Thus, complaints concerning terms, conditions or rates for elements of a local exchange carrier's network would, in the first instance, be subject to arbitration at the state level. Any disputes as to the rates that a local exchange company may charge for access to its network would not be subject to FCC jurisdiction, because those rates would be determined in the first instance through an arbitration conducted by the state utility commission or by a statement of terms and conditions approved by the state commission,

---

[4] Iowa Utilities Bd. v. F.C.C., 120 F.3d 753, 796 (8th Cir. 1997).

pursuant to the terms of the Act. In many instances, the Interconnection Agreements resulting from such arbitrations include a contractual dispute resolution provision, which would need to be satisfied before again seeking a regulatory solution. Thereafter, disputes arising under Interconnection Agreements approved by State Commissions would again be subject to state jurisdiction, not FCC jurisdiction. Further, most state commissions are now implementing expedited complaint procedures for handling complaints that arise under an Interconnection Agreement. For these reasons, the scope of complaints that would be subject to the proposed hearing-type, accelerated complaint process before the Commission should be very narrow.

The best way for the Commission to work cooperatively with state regulatory commissions on such enforcement matters to ensure that the respective interests of the Commission and the states are protected is to establish some process for summary dismissal of complaints filed prior to arbitration of an arbitrable issue, prior to the exercise of an applicable Interconnection Agreement dispute resolution provision, and/or prior to seeking resolution of a dispute arising out of an Interconnection Agreement before the state regulatory commission that approved that Interconnection Agreement.

II. Minitrials.

The Public Notice seeks comment on the feasibility and desirability of adjudicating complaints using a "minitrial" process.[5] The SBC Companies contend that a "minitrial" process could be a very effective tool to expedite the complaint resolution process, but only if the "minitrial" is a **substitute** for the full development of the case on paper as specified in the

[5]Public Notice at p. 4.

Complaint R&O. In a sixty day process that dates from the filing of the complaint, there is simply not enough time for document searches, a complete gathering and rendition of all the facts, supporting affidavits, and identification of any and all persons with knowledge of the events, even in those rare circumstances where none of the personnel involved is on vacation, there are no holidays occurring within that period and the complainant has actually fully complied with the notice and settlement negotiation process outlined in the Complaint R&O. Even under those best of circumstances, such a compressed schedule will discourage the continuation of settlement discussions after the complaint is filed. It is inevitable that the very persons with most knowledge of the facts are the same persons who must participate in settlement discussions. If those people are required to devote all their time to the development of the formal answer within just a few days, they will be unable to simultaneously continue serious settlement discussions.

If, however, the mini-trial were to be used for the presentation of the facts and legal arguments in support of the legal issues in lieu of the full paper development of the case in the answer and stipulation, then such procedure would indeed serve its intended purpose of facilitating swift and fair resolution of disputes between competitors. Preparation of the defendant's case could proceed on an orderly basis at the same time that settlement talks are being conducted. However, substitution of the mini-trial for the full blown paper presentation of the case in the answer would require that the defendant be allowed a notice pleading standard for its answer, rather than being required to file the detailed answer outlined in the Complaint R&O. There is no suggestion in the Public Notice that notice pleading would be used in this process; in

fact, the Public Notice indicates that the full presentation of facts and legal position specified in the Complaint R&O would also apply to the answer required here. The SBC Companies do not support that requirement.

The SBC Companies agree that the proposal to allot each side an equal amount of time within which to present its case and to cross-examine its opponent's witnesses is a good one, with one exception. On occasion, a complainant could make a factual allegation, allegedly based on its experience, but such allegation can be proved wrong. However, the explanation as to how and why it is wrong may be dependent on a full understanding of a complex concept that requires expert testimony and a substantial amount of time to explain. For example, a network expert might be needed to explain in detail, with the aid of diagrams, how a new service functions in order to refute a claim that a carrier must have access to some control point in the defendant carrier's network in order to provide its competing service. Alternatively, on a billing issue, a billing expert might have to use charts and graphs to explain why a billing refinement sought by a carrier is not feasible, even though it sounds reasonable to a lay person that does not have a clear understanding of the billing process. Such expert testimony is more time-consuming than fact testimony. Therefore, while it is still equitable to allow the two parties equal time to present and cross-examine on such evidence, the initial determination of the amount of time to be allotted both parties should be set based on time estimates provided by the parties, with reasonable consideration given to any additional time needed for expert testimony to explain complicated facts underlying the factual allegations.

The equal division of time is a far more equitable solution than allotting a set amount of

time for each witness because a small company may be able to move forward with only one witness to cover all aspects of a dispute, while a larger company may have the same issue responsibility spread over a number of persons. The information to be presented and rebutted may still be equal in length; the only difference is the manner of organization of the two parties. Allotting equal time to each party helps to ameliorate the effect of uneven numbers of witnesses for the complainant and the defendant.

III. Discovery.

The Public Notice invites comment on:

> how best to conduct discovery in connection with the 60-day complaint process currently under contemplation. Given the compressed time frame for Accelerated Docket proceedings, commenters should address whether, as required in the Complaint R&O, parties should submit all discovery requests and disputes to the Enforcement Task Force in advance of the initial status conference so that the Task Force may issue its decision on these issues at that conference. Should the parties exchange all documents relevant to the issues raised in the complaint and answer either when they file their initial pleadings, or at some other point before the initial status conference discussed below? If not all relevant documents, should the parties be required to exchange all documents that bear some closer relationship to the claims and defenses in the proceeding? For example, the U.S. District Court for the Eastern District of Texas requires that parties produce, as part of their initial, automatic disclosures, "all documents, data compilations, and tangible things in the possession, custody, or control of the party that are *likely to bear significantly* on any claim or defense." Finally, given the short time frame available for discovery, what sanctions would be appropriate when a party fails to provide discovery as ordered by the Enforcement Task Force, including the production of witnesses for depositions?[6]

If the Commission requires an answer within a seven day time frame as currently proposed, there is no reasonable opportunity for any type of discovery process. This is yet further evidence of the fact that the proposed schedule is far too compressed to afford due process to

---

[6]Public Notice at p. 4.

either the defendant or the complainant.

At this point, it is too early for the Commission or the parties filing comments to be able to evaluate how well the new discovery rules established in the Complaint R&O will work. If an Accelerated Docket is to be established with the goal of reaching a decision in a shorter time than contemplated under the rules established in the Complaint R&O, there must first be a determination that a complaint qualifies for admission onto the Accelerated Docket and the Accelerated Docket schedule should run from the time a complaint is admitted onto that docket. Just as in the Complaint R&O process, that initial period will serve two purposes: it will prevent the Accelerated Docket being clogged by complaints not appropriate for accelerated treatment and allow the parties to begin the fact gathering and legal research process well in advance of the answer date. Any further reduction of time should be accomplished by adopting a notice pleading standard for the answer, with full presentation of the facts, defendants's position and supporting legal authority at hearing, leaving a shorter time period between the hearing and the decision and recommendation of the Enforcement Task Force, as shown in the procedural schedule set forth in Section I above.

IV. Pre-Filing Procedures.

The Public Notice seeks comment:

> on whether a complainant seeking acceptance onto the Accelerated Docket should, as a precondition of such acceptance, have attempted to undertake informal settlement discussions under the auspices of the Enforcement Task Force. Should adequate advance notice to the prospective Defendant of the issues to be covered in these informal settlement discussions be one of the criteria considered in determining acceptance onto the Accelerated Docket? What other criteria should be applied by the Enforcement Task Force and the Bureau in determining what complaints should be accepted onto the Accelerated Docket?

> To what extent, if any, would the Commission's *ex parte* rules be implicated by the Enforcement Task Force's involvement in such pre-filing discussions between prospective parties to a potential complaint proceeding? If a complainant does not request expedited treatment, might an action be included on the Accelerated Docket at the defendant's request? Comment is also sought on whether, or in what circumstances, previously filed complaints should be designated for inclusion on the Accelerated Docket. What steps would be necessary to provide adequate protection to the confidential or proprietary information of the parties engaged in such informal, pre-filing discussions?[7]

The SBC Companies support a requirement that a complainant seeking acceptance onto the Accelerated Docket should, as a precondition of such acceptance, have attempted to undertake informal settlement discussions under the auspices of the Enforcement Task Force. The SBC Companies also support the proposition that adequate advance notice of issues be one of the criteria considered in determining acceptance onto the Accelerated Docket. The Complainant should also be required to establish that the any requisite steps (arbitration, contractual dispute resolution, state utility commission dispute resolution) have already been exhausted and that the complaint does raise an issue subject to the FCC's jurisdiction.

In order to assure that the pre-filing notice constitutes effective notice, the complainant should be required to serve the notice of all elements to be included in the complaint on the registered agent of the defendant at least thirty days prior to the filing of the complaint, specifically identifying the employees of the defendant with whom the complainant has had contact on the complaint issues. To leave the identity of the person to whom notice is to be sent and the time period for that notice indefinite just invites abuse. Notice to an inexperienced or inappropriate person ten days before a complaint is filed may not be any more effective than a

---

[7]Public Notice at p. 5.

total absence of notice.

As indicated on the procedural schedule set forth in Section I above, the Commission should establish a specific procedure for considering and ruling on these threshold issues, such as jurisdiction and "failure to state a claim" before accepting the complaint onto the Accelerated Docket. Otherwise, the parties and the Commission staff will inevitably invest a lot of time, effort and resources on complaints not suitable for the accelerated docket and, in some cases, frivolous, that will clog the system and slow the process for the truly legitimate complainants that deserve an expedited result. In order for those threshold issues to be raised and ruled upon before such expenditure of resources, however, the Commission would need to schedule a status conference within 15 days of the filing of the complaint to rule on acceptance of the complaint onto the Accelerated Docket. Defendants should be allowed to file a motion to dismiss within 5 days after a complaint is filed, in advance of expedited status being granted. Only after the Commission has ruled upon the threshold issues affecting suitability of the complaint for the Accelerated Docket, should such status be granted and the Accelerated Docket schedule triggered. Otherwise, the expedited process will be misused as an avenue to avoid scrutiny of jurisdiction and the adequacy of the complaint itself, thereby increasing the burden of dealing with frivolous complaints, rather than lightening that load.

In response to the request for comment as to whether a defendant should be allowed to request that an action be included on the Accelerated Docket and whether any party should be able to request such treatment for previously filed complaints, the SBC Companies support allowing defendants to so move. However, there should be a time frame set for the filing of such

motions to avoid the initial processing of a complaint under one set of rules and then reprocessing that same complaint under the other set of rules. The same five day period that runs from the date the complaint is filed, proposed for motions to dismiss, could apply to motions by a defendant to include a complaint on the Accelerated Docket. A period of twenty or thirty days after approval of the new rules could be set as the deadline for any party to file a motion to include complaints filed before the approval of the rules for acceptance of a complaint onto the Accelerated Docket. Just as outlined above, all such requests should trigger a settlement conference under the supervision of the Enforcement Task Force to determine the threshold issues before according Accelerated Docket status to the complaint.

V. Pleading Requirements.

The Public Notice invites comment on "the reasonableness of requiring the answer to be filed within seven calendar days of a complaint, as likely would be necessary in the 60-day complaint process currently under contemplation."[8]

The SBC Companies argued in the Complaint R&O that a 20 day time frame for a complete answer is too short and, very clearly, a seven day time frame is much too short, especially if the answer is to be as extensive as required by the Complaint R&O. It is a clear violation of due process for any party to be required to fully delineate the facts and its legal position within a seven day period; such requirement is the procedural equivalent of being put to trial on a mere seven day notice. "The proceedings of an administrative agency must meet the requirements of due process of law." Lewis v. Metropolitan S, & L. Assn, 550 S.W. 2d. 11,13

[8]Public Notice at p. 5.

(Tex. 1977). The due process right to notice must be granted at a meaningful time and in a meaningful manner. Fuentes v. Chevon, 407 U.S. 67, reh. den. 409 U.S. 902 (1983). Further, the U.S. Supreme Court long ago held that a five day notice served upon a Virginia plaintiff to appear in a Texas foreclosure suit did not comply with the requirements of due process of law. Roller v. Holly, 176 U.S. 398 (1900). The Court in that case observed that, while there was very little case law specifically identifying the length of period that qualified as due process, the length of notice provided in the laws of the various states reflected some concensus of opinion as to the length of reasonable notice. The Court cited examples that were predominantly 20 to 30 days, with the shortest (other than the one that was subject of the suit) being 10 days. The Supreme Court thereupon concluded that five days in that case was not a reasonable notice, nor due process of law. Although the time required for travel was clearly a factor in the Court's decision, a survey of the answer dates among the various state and federal courts would still reflect a predominate schedule of 20 to 30 days, even where notice pleading is used, validating a current application of the holding in that case. The SBC Companies strongly urge that no answer be required in a shorter time frame than that established in the Complaint R&O, namely twenty days, in order that defendants be afforded their due process right of notice at a time to allow reasonable opportunity to present their case.

In the Complaint R&O, Southwestern Bell Telephone Company argued that because complainants will have months to prepare their complaints, requiring the defendant carriers to submit detailed responses with full legal and factual support within a twenty day window would be unfair and unreasonably burdensome in most cases. In its Order approving the twenty day

timeframe for answers, the Commission stated that it viewed "the defendants as having far more than twenty days in which to prepare their answers because the prefiling and format and content requirements adopted in this proceeding are intended to work in conjunction with the reduction in time to file an answer."[9] Certainly, it is crucial that the complainant be required to file with its complaint a copy of the certified letter previously mailed to the defendant outlining the allegations that form the basis of the complaint, as provided in the Complaint R&O. Otherwise, there will be no assurance that the defendant will have any more than the allotted answer time to investigate the facts and develop its legal position. But even with such requirement, twenty days is the very shortest time within which any defendant should be required to develop and fully present its position. If any shorter answer period is considered, then the Commission should allow notice pleading for the answer, with the defendant's position to be more fully presented at the hearing. The parties could then be allowed to supplement their initial filings in post-hearing briefs.

The process of reaching a decision is a process of applying the law to the facts. If the facts are not clearly developed, presented and understood, then the legal decision is very likely to be wrong. Therefore, it is the position of the SBC Companies that the time for development of the facts and the filing of an answer should not be squeezed any tighter than the time frames already established in the Complaint R&O. The process that could and should be expedited, if a quicker result is required, is the marshaling and full presentation of those facts and the applicable law, which could be done at the mini-trial, rather than requiring the full-blown paper presentation

[9]Complaint R&O, para. 100 at p. 45.

as outlined in the Complaint R&O. Such approach would allow the parties more time to prepare the facts and legal arguments set forth in the answer, as well as the necessary time to prepare for the mini-trial.

VI. Status Conferences.

The Public Notice seeks comment as to the feasibility of holding a status conference no later than 15 calendar days after the filing of the complaint, where:

> the parties would meet and confer about the following issues: (1) settlement prospects, (2) discovery, (3) issues in dispute, (4) a schedule for the remainder of the proceeding. See Complaint R&O ¶ 145. The parties would be required to reduce to a joint, written statement their agreements and remaining disputes regarding these matters, and submit it to the Commission two days in advance of the status conference. See id. The parties also would be required to agree to a joint statement of stipulated facts, disputed facts and key legal issues, which also would be submitted to the Commission two days before the status conference. See Complaint R&O ¶¶ 258-260. Comment is invited on imposing these requirements for the initial status conference in a 60-day process. Additionally, comment is invited on the nature of the briefing schedule, if any, that the Enforcement Task Force should set at the initial status conference.[10]

The proposal to schedule a status conference no later than fifteen days after the filing of a complaint seeking admittance onto the Accelerated Docket would be appropriate if the purpose of that status conference is to address any motion to dismiss and/or to determine the suitability of the complaint for acceptance onto the Accelerated Docket. Otherwise, it is the position of the SBC Companies that the first status conference should be held no earlier than 25 days after the complaint has been granted accelerated status in order to allow for a 20 day answer period and adequate time for development of the facts and the law, so that the parties to be able to file the joint statement of stipulated facts as required by the rules adopted in the Complaint R&O.

---

[10]Public Notice at pp. 5-6.

Scheduling a status conference at 15 days that would require a prefiled joint stipulation would just ensure the abandonment of any meaningful settlement discussions upon filing of the complaint because in the 13 day period after a complaint is served, the defendant would be required to devote all available resources to the development of a comprehensive answer and to preparation for the status conference. Even in very large companies, only a limited number of people will, in most instances, have the requisite depth of knowledge of the facts to allow them to adequately perform any of those tasks. Assuming that all of those people are in place, not on vacation or in a hearing on some other matter, on the day the complaint comes in, there are still physical limits as to how much can be accomplished in such a short time frame. It is usually difficult to even schedule a meeting among carrier representatives within a two week time frame, because the decision makers authorized to engage in meaningful settlement discussions have their time scheduled well in advance. All local exchange companies are continuing to experience a heavy personnel drain because of the continuing demand for arbitrations before state commissions and the people involved in those arbitrations are very likely to be the very same people needed for serious settlement negotiations in proceedings subject to the Accelerated Docket procedure. Thus, the SBC Companies would suggest that, if it is determined that further time compression is absolutely necessary, it should be implemented through the hearing process being substituted for the full blown paper presentation of the issues. The answer should be limited to a notice pleading in order to allow time for adequate preparation for the mini-trial.

VII. Damages.

The Public Notice asks commenters to "address whether the Accelerated Docket should

be restricted to bifurcated liability claims, with damages claims to be handled separately under the procedures set out in the Complaint R&O."[11]

The SBC Companies support bifurcation, except where it is clear from the beginning that the complainant has no damages. Therefore, SBC would propose that where the complainant makes a *prima facie* showing of damages in its complaint, supported as described in the Complaint R&O, then bifurcation is appropriate. It is simply not possible to deal with such extensive, detailed issues as damages within the expedited schedule here proposed.

VIII. Other Issues.

The Public Notice requests comment on "whether any other rules should be specifically tailored to accommodate a 60-day, hearing-type adjudication process."[12] If the Commission adopts an adjudication process that will operate on a timeframe that is even shorter than that outlined in the Complaint R&O, then there should be no need for any bond or deposit of funds arrangement during the short pendancy of the complaint. Further, the necessity for a hearing to determine whether the applicable standards had been met would make any such arrangement impractical for the expedited schedule being proposed for the accelerated Docket.

IX. Review by the Commission.

The Public Notice states that:

> The Complaint R&O notes that the 1996 Act requires the Commission itself to issue an order concluding certain categories of proceedings within prescribed periods of time from the date on which the complaint was filed. See id. ¶ 1. In particular, the 1996 Act imposes a five-month deadline on some proceedings. Id.

---

[11]Public Notice at p. 6.

[12]Public Notice at p. 6.

> To satisfy these statutory requirements in Accelerated Docket proceedings, it likely would be necessary for all briefing on any petition seeking review of an initial decision by the Enforcement Task Force to be completed between 20 and 30 days of the decision's release. Also under consideration is the possibility of *en banc* oral argument before the Commission for Accelerated Docket proceedings in which the Commission does not summarily adopt the initial Enforcement Task Force decision. Comment is sought on issues relating to this type of review process for initial decisions in the Accelerated Docket.[13]

The SBC Companies believe it imperative that all complaints be resolved within the jurisdictional time frame in a manner that will allow expeditious appeals. Toward that end, a 30 day time frame for submission of all briefs seeking review of an initial decision by the Enforcement Task Force is reasonable. SBC also supports the use of *en banc* oral argument before the Commission for Accelerated Docket proceedings in which the Commission does not summarily adopt the initial Enforcement Task Force decision, so long as that process results in a written, fully appealable Commission order.

X. Conclusion.

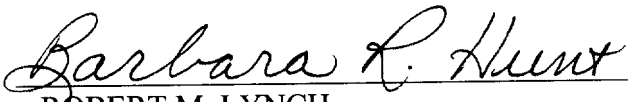
For the foregoing reasons, the SBC Companies respectfully request that the Commission reconsider the extremely short schedule under consideration.. The procedure should allow for an initial status conference to rule on acceptance of the complaint onto the Accelerated Docket. The Accelerated Complaint procedures should be triggered only at the point that the complaint is accepted onto the Accelerated Docket and a 20 day period should be allowed if a detailed answer is to be required, as described in the Complaint R&O. Alternatively, if any shorter answer period

[13]Public Notice at p. 6.

is to be adopted, then the mini-hearing should serve as the substitute for a full blown development of the docket on paper, and a "notice-type" pleading standard adopted for the answer.

Respectfully Submitted,

SOUTHWESTERN BELL TELEPHONE CO.
PACIFIC BELL
NEVADA BELL



ROBERT M. LYNCH
DURWARD D. DUPRE
BARBARA R. HUNT

One Bell Plaza, Room 3703
Dallas, Texas 75202
214-464-5388

NANCY C. WOOLF
140 New Montgomery Street, Room 1522
San Francisco, California 94105
(415) 542-7657

Their Attorneys

January 12, 1998

CERTIFICATE OF SERVICE

I, Kathy Moody, hereby certify that the foregoing "Comments of SBC Companies", have been served on January 12, 1998, to the Parties of Record.

Kathy Moody

Kathy Moody

January 12, 1998

ITS INC
1231 20th STREET NW
WASHINGTON DC 20036

COMMON CARRIER BUREAU
ENFORCEMENT TASK FORCE
1919 M STREET NW, ROOM 650-L
WASHINGTON DC 20554
(2 COPIES)

COMMON CARRIER BUREAU
ENFORCEMENT DIVISION
FEDERAL COMMUNICATIONS COMMISSION
2025 M STREET NW, ROOM 6120
WASHINGTON DC 20554

MARK C ROSENBLUM
AT&T
295 NORTH MAPLE AVE
BASKING RIDGE NJ 07920

GENEVIEVE MORELLI
EXECUTIVE VICE PRESIDENT AND
GENERAL COUNSEL
COMPETITIVE TELECOMMUNICATIONS
ASSOCIATION
1900 M STREET NW SUITE 800
WASHINGTON DC 20036

ALBERT H KRAMER
DICKSTEIN SHAPIRO MORIN & OSHINSKY LLP
COUNSEL FOR ICG TELECOM GROUP AND
AMERICAN PUBLIC COMMUNICATIONS
COUNCIL
2101 L STREET NW
WASHINGTON DC 20037-1526

FRANK W KROGH
MCI TELECOMMUNICATIONS CORPORATION
1801 PENNSYLVANIA AVE NW
WASHINGTON DC 20006

TERESA MARRERO
SENIOR REGULATORY COUNSEL
TELEPORT COMMUNICATIONS GROUP INC
TWO TELEPORT DRIVE
STATEN ISLAND NY 10311

ANDREW D LIPMAN
SWIDLER & BERLIN CHTD
COUNSEL FOR MFS COMMUNICATIONS CO
3000 K STREET NW STE 300
WASHINGTON DC 20007

CHARLES C HUNTER
HUNTER & MOW PC
COUNSEL FOR TELECOMMUNICATIONS
RESELLERS ASSOCIATION
1620 I STREET NW STE 701
WASHINGTON DC 20006

MARY MCDERMOTT
LINDA KENT
UNITED STATES TELEPHONE ASSOCIATION
1401 H STREET NW STE 600
WASHINGTON DC 20005

RUSSELL M BLAU
MELISSA B ROGERS
SWIDLER & BERLIN CHTD.
COUNSEL FOR KMC TELECOM INC
3000 K STREET NW STE 300
WASHINGTON DC 20007

FRANK MOORE
SMITH BUCKLIN & ASSOCIATES
GOVERNMENT AFFAIRS DIVISION
COUNSEL FOR ATSI
1200 19TH ST NW
WASHINGTON DC 20036

GERALD M ZUCKERMAN
COMMUNICATIONS AND ENERGY
DISPUTE RESOLUTION ASSOCIATES
INTERNATIONAL SQUARE
1825 I STREET NW SUITE 400
WASHINGTON DC 20006

CHARLES H HELEIN
HELEIN & ASSOCIATES PC
COUNSEL FOR AMERICA'S CARRIERS
TELECOMMUNICATIONS ASSOCIATION
8180 GREENSBORO DRIVE STE 700
MCLEAN VA 22102

ROBERT B MCKENNA
U S WEST INC
1020 19TH ST NW STE 700
WASHINGTON DC 20036

FRANK MICHAEL PANEK
AMERITECH
2000 WEST AMERITECH CENTER DRIVE
ROOM 4H84
HOFFMAN ESTATES IL 60196-1025

GENE A BECHTEL
BECHTEL & COLE CHTD
1901 L STREET NW STE 250
WASHINGTON DC 20036

DOUGLAS E HART
FROST & JACOBS LLP
201 EAST FIFTH STREET
2500 PNC CENTER
CINCINNATI OH 45202

LEON M KESTENBAUM
H RICHARD JUHNKE
SPRINT COMMUNICATIONS INC
1850 M STREET NW 11TH FL
WASHINGTON DC 20036